

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

IN THE MATTER OF: :
:
SEARCH WARRANT FOR : MOTION FOR ORDER
: DIRECTING INSTAGRAM, LLC
INSTAGRAM : NOT TO DISCLOSE EXISTENCE
: OF SEARCH WARRANT
RECORDS OF :
: (FILED UNDER SEAL)
“drakebell”; CHILD AB/NEG INFO
CHILD AB/NEG INFO “planetjanetty”

Now comes the State of Ohio by and through Cuyahoga County Prosecutor Michael C. O'Malley and his undersigned assistant, and respectfully requests this Honorable Court to issue an ORDER directing Instagram LLC, located at 1601 Willow Road, Menlo Park, CA 94025, not to disclose the existence of the above-described warrant unless further ordered by this Court. The reasons for the Prosecutor's motion are set out more fully in the attached Brief, incorporated by reference herein.

Respectfully submitted,

Michael C. O'Malley
Cuyahoga County Prosecutor


KATHERINE MULLIN (#0084122)
Assistant Prosecuting Attorney
1200 Ontario Street
Cleveland, OH 44113

BRIEF

Detective Raul Atanacio, Badge #1652, of the Cleveland Police Department, has sought a warrant in connection with an investigation into unlawful sexual conduct with a minor, and has requested records for the following Instagram LLC accounts: drakebell; [REDACTED] planetjanettv.

Instagram LLC provides social media platforms that allow users to connect and communicate with other Instagram users through the internet. 18 U.S.C. 2703 allows the government to require the disclosure by a provider of electronic communication service of records or information pertaining to a subscriber of the service and the contents of electronic communication that is in electronic storage pursuant to a warrant obtained under the federal rule or under state rules by a court of competent jurisdiction.

A “court of competent jurisdiction” includes the court which has jurisdiction over the offense being investigated as well as a court of general jurisdiction of a State authorized by law to issue search warrants. *See* 18 U.S.C. 2711(3)(A) & (B). The State asserts that Detective Atanacio has obtained a warrant for these electronic communications held by Facebook/Instagram LLC pursuant to Crim. R. 41. As the crimes alleged in the search warrant affidavit are alleged to have occurred in Cuyahoga County and this Court is undoubtedly permitted by law to issue a search warrant pursuant to Crim. R. 41, this Court is a “court of competent jurisdiction” for purposes of the Electronic Communications Privacy Act, and specifically the Stored Communications Act.

18 U.S.C. 2703(b)(1)(A) states that:

(1) A governmental entity may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

(A)

without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction;

Despite this provision and despite language contained within Detective Atanacio's search warrant, Facebook/Instagram, LLC has informed peace officers in other investigations that it will disclose the existence of search warrants executed by them if the detective (affiant) does not produce a separate order from the Court directing Facebook/Instagram not to disclose the existence of the search warrant.

Other provisions of the U.S. Code provide for non-disclosure. 18 U.S.C. 2705(a)(2) provides that records obtained by subpoena or court order are not to be disclosed if it would have an adverse result. These include:

(2) An adverse result for the purposes of paragraph (1) of this subsection is—

(A)

endangering the life or physical safety of an individual;

(B)

flight from prosecution;

(C)

destruction of or tampering with evidence;

(D)

intimidation of potential witnesses; or

(E)

otherwise seriously jeopardizing an investigation or unduly delaying a trial.

The State respectfully asks this Court for an order directing Facebook/Instagram LLC not to disclose the existence of any search warrant or other

legal process used to obtain the records described above, as such disclosure would have an adverse impact on this investigation, including seriously jeopardizing an investigation.

Respectfully submitted,

MICHAEL C. O'MALLEY
Cuyahoga County Prosecutor



KATHERINE MULLIN (#0084122)
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113

Redaction Log

Total Number of Redactions in Document: 1

Redaction Reasons by Page

Page	Reason	Description	Occurrences
2	CHILD AB/NEG INFO	Identifying information of the child abuse/neglect victim(s) and the reporter(s) of the abuse/neglect; and the child abuse/neglect initial abuse report; have been redacted pursuant to O.R.C. 2151.421(I)(1) and (2); and Beacon Journal v. Akron, 104 Ohio St. 3d 399, 2004-Ohio-6557.	1

Redaction Log

Redaction Reasons by Exemption

Reason	Description	Pages (Count)
CHILD AB/NEG INFO	Identifying information of the child abuse/neglect victim(s) and the reporter(s) of the abuse/neglect; and the child abuse/neglect initial abuse report; have been redacted pursuant to O.R.C. 2151.421(I)(1) and (2); and Beacon Journal v. Akron, 104 Ohio St. 3d 399, 2004-Ohio-6557.	2(1)

Redaction Log

Total Number of Redactions in Document: 2

Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	CHILD AB/NEG INFO	Identifying information of the child abuse/neglect victim(s) and the reporter(s) of the abuse/neglect; and the child abuse/neglect initial abuse report; have been redacted pursuant to O.R.C. 2151.421(I)(1) and (2); and Beacon Journal v. Akron, 104 Ohio St. 3d 399, 2004-Ohio-6557.	2

Redaction Log

Redaction Reasons by Exemption

Reason	Description	Pages (Count)
CHILD AB/NEG INFO	Identifying information of the child abuse/neglect victim(s) and the reporter(s) of the abuse/neglect; and the child abuse/neglect initial abuse report; have been redacted pursuant to O.R.C. 2151.421(I)(1) and (2); and Beacon Journal v. Akron, 104 Ohio St. 3d 399, 2004-Ohio-6557.	1(2)